

PATENT

IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

Applicant: Robert Lamb) "EXPRESS MAIL"
Application No.: 09/670,346) mailing label No.: EV341012783US
For: VITAMIN E)
PHOSPHATE/PHOSPHATIDYLCHOLINE)
LIPOSOMES TO PROTECT FROM OR)
AMELIORATE CELL DAMAGE) Date of Deposit: November 23,
Filed: September 27, 2000) 2004
Group Art Unit: 1615)
Examiner: G. Kishore)
Attorney Docket No. 30899/40642)
I hereby certify that this paper (or fee) is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 CFR §1.10 on the date indicated above and is addressed to: Commissioner for Patents, Box PCT, PO Box 1450, Alexandria, VA 22313-1450
Richard Zimmermann

CERTIFICATION UNDER 37 CFR 1.10 **RECEIVED**

DEC 01 2004

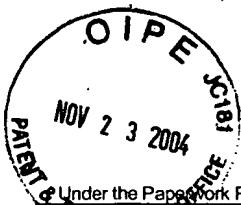
OFFICE OF PETITIONS

Commissioner for Patents
Box PCT
PO Box 1450
Alexandria, VA 22313-1450

I hereby certify the attached items are being deposited with the United States Postal Service on November 23, 2004 in an envelope addressed to MS Petition Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 utilizing the "Express Mail Post Office to Addressee" service of the United States Postal Service under Mailing No. EV341012783US

- a. Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)
- b. Declaration of Anne P. Hovis
- c. Declaration of Robert Lamb
- d. Part B - Issue Fee Transmittal
- e. Power of Attorney and Correspondence Address Indication Form
- f. Check for \$1370.00

Richard Zimmermann



#20

PTO/SB/64 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)Docket Number (Optional)
30899/40642

First named inventor: Robert Lamb

Application No: 09/670,346

Art Unit: 1615

Filed: September 27, 2000

Examiner: G. Kishore

Title: VITAMIN E PHOSPHATE/PHOSPHATIDYCHOLINE LIPOSOMES TO PROTECT FROM
OR AMELIORATE CELL DAMAGEMS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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OFFICE OF PETITIONS

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

 Small entity – fee \$ 685.00 (37 CFR 1.17(m)). Applicant claims small entity status.
See 37 CFR 1.27. Other than small entity – fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of _____ (identify type of reply):

has been filed previously on _____ .
 is enclosed herewith.

B. The issue fee of and publication fee (if required) \$ 685.00

has been paid previously on _____ .
 is enclosed herewith.

Page 1 of 2

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3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. This statement is supported by a declaration from Robert Lamb (inventor) and a declaration from Anne Hovis (a representative of the inventor's licensee).



Signature

November 23, 2004

Date

David A. Gass

Typed or printed name

38,153

Registration Number, if applicable

MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357

Address

(312) 474-6300

Telephone Number

Enclosures: Fee Payment Reply (Issue Fee and copy of Issue Fee Transmittal) Terminal Disclaimer Form Additional sheets containing statements establishing unintentional delay (Lamb and Hovis declarations) Other: Power of Attorney and Change of Correspondence Address

Page 2 of 2

CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No.: EV 341012783 US, in an enveloped addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this date:

Dated: November 23, 2004

Signature:  (Richard Zimmerman)

NO 023-04 TUE 13:46
11/03/2004 08:57 7034307594

11-26-04
FAX NO. 7034295406

19 P.02

NOV 23 2004

PATENT & TRADEMARK OFFICE
PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail Box ISSUE FEE
Commissioner for Patents
Washington, D.C. 20231
Fax (703)746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Block 1 through 4 should be completed where appropriate. All further correspondence including the Patent, Advance Order and notification of maintenance fees will be mailed to the current correspondence address as indicated unless otherwise directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

Current Correspondence Address (use only one of the entries)

4112 7500 01/01/2003

AGENT FOR RINTNER, PLOTKIN & KAHN
1000 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, DC 20036

Robert Lamb, PH.D.
13610 Edmonthorpe Road
Midlothian, VA 23113

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Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) transmitted. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
I hereby certify that this **Fee(s) Transmittal** is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Signature)
(Date)

APPLICATION NO.	PILED DATE	FIRST NAME & INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,346	09/27/2000	Robert Lamb	PO2194-09001	4446

TITLE OF INVENTION: VITAMIN E PHOSPHATE/PHOSPHATIDYLCHOLINE LIPOSOMES TO PROTECT FROM OR AMELIORATE CELL DAMAGE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
Nonprovisional	YES	\$850	\$0	\$850	04/03/2003

EXAMINER	ART UNIT	CLASS-SUBCLASS
KISHORE, GOLLAMUDU S	1813	424-430000

5 685

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.35).

2. Change of correspondence address (or Change of Correspondence Address Form PTO/SB/12) attached.

3. "Fee Address" indication (or "Fee Address" indication form PTO/SB/47, Rev. 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents if no name is listed, no name will be printed.

1 _____
2 _____
3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no residence data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent)

Individual Corporation or other private group entity Government

4a. The following fee(s) are enclosed:

4b. Payment of Fee(s):

Issue Fee
 Publication Fee
 Advance Order - # of Copies _____

A check in the amount of the fee(s) is enclosed.

Payment by credit card. Form PTO-2038 is attached.

The Commissioner is hereby authorized to charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature): *Dad M. Glass*

(Date)

11/33/04

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant, a registered attorney or agent, or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

The collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 132 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including collecting, preparing, and submitting the completed application form to the USPTO. This will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231, DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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TRANSMIT THIS FORM WITH FEE(S)

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

OPII
NOV 2 3 2004

IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

PATENT & TRADEMARK OFFICE
Application of:

Robert Lamb

Application No.: 09/670,346

For: VITAMIN E PHOSPHATE/
PHOSPHATIDYLCHOLINE
LIPOSOMES TO PROTECT
FROM OR AMELIORATE
CELL DAMAGE

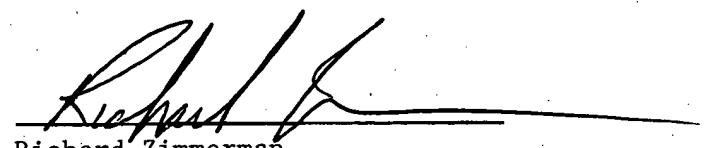
Filed: September 27, 2000

Group Art Unit: 1615

Examiner: G. Kishore

I hereby certify that this correspondence is
being deposited with the US Postal Service as
Express Mail, Airbill No. EV341012783US,
in an envelope addressed to: Commissioner
for Patents, P.O. Box 1450, Alexandria, VA
22313-1450, on this date:

November 23, 2004


Richard Zimmerman

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OFFICE OF PETITIONS

Dear Sir:

I, Anne P. Hovis, declare the following upon information and belief:

1. I am providing this declaration to provide information to the Patent and Trademark Office in support of a petition to revive U.S. Patent Application Serial No. 09/670,346 (hereinafter "the '346 application") identified above.
2. On March 3, 2000, a subsidiary of Phlo Corporation, a Delaware corporation, licensed certain technology, including that covered by the '346 application, directly from inventor Robert G. Lamb, Ph.D. I am the Executive Vice President and General Counsel of Phlo Corporation ("Phlo").
3. In mid-2000, Phlo retained the law firm of Arent Fox Kintner Plotkin & Kahn (hereinafter "Arent Fox") to prosecute the '346 application. At that time, Phlo had an existing relationship with Arent Fox with respect to other (unrelated) legal matters. Pursuant to the

arrangement between Phlo and Dr. Lamb, the Arent Fox attorneys were instructed to communicate with both Dr. Lamb and Phlo concerning prosecution of the '346 application.

4. I am aware that the Patent Office issued an Office action in the '346 application dated May 21, 2002. After the Office action was issued, Phlo personnel (including me) worked with Arent Fox and with Dr. Lamb in the preparation of an amendment to the '346 application (and supporting papers) that Arent Fox filed with the Patent and Trademark Office on October 25, 2002.

5. Between October 25, 2002, and October 22, 2004, neither I nor Phlo received any further updates from Arent Fox that there had been further developments from the Patent and Trademark Office in the '346 application that occurred after October 25, 2002. Specifically, neither Phlo nor I received information from Arent Fox that the Patent Office had issued a Notice of Allowance or a Notice of Abandonment.

6. During the almost two year time period specified in the preceding paragraph, I contacted Arent Fox attorneys from time to time to inquire about the status of the '346 application, but was never told that the Patent Office had issued a subsequent communication such as a Notice of Allowance or Notice of Abandonment. In or about October 2003, I was told by an Arent Fox attorney that Arent Fox had received no communication from the PTO regarding the '346 application.

7. Phlo and I were first made aware of the issuance of a Notice of Allowance (dated 01/03/2003) and issuance of a Notice of Abandonment (dated 04/14/2003) in the '346 application by Robert Lamb on or about October 19, 2004. The '346 application was abandoned without my intent and without the intent of Phlo.

8. Promptly after learning of the status of the application, I began working with Dr. Lamb to retain alternative patent counsel to help us with the '346 application. After inquiries to multiple law firms, Advanced Bio-Delivery (a company within Phlo's corporate group) ("ABD") retained Marshall Gerstein & Borun LLP to assist with prosecution of the '346 application.

Specifically, ABD retained Marshall Gerstein & Borun LLP to determine Dr. Lamb's right to revive the '346 application from abandonment and assist with a petition to revive it. The process of researching, interviewing, and retaining another law firm, including the law firm's conflict check and negotiation of a retainer agreement, took a couple of weeks.

9. I further declare that all statements made herein on the knowledge of the undersigned are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent granted thereon.



Anne P. Hovis
Anne P. Hovis

Nov. 19, 2004



IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

In re Application of:) I hereby certify that this correspondence is
Robert Lamb) being deposited with the US Postal Service as
Application No.: 09/670,346) Express Mail, Airbill No.
For: VITAMIN E PHOSPHATE/) EV341012783US , in an envelope
PHOSPHATIDYLCHOLINE) addressed to: Commissioner for Patents, P.O.
LIPOSOMES TO PROTECT) Box 1450, Alexandria, VA 22313-1450, on
FROM OR AMELIORATE) this date:
CELL DAMAGE)
Filed: September 27, 2000) November 23, 2004
Group Art Unit: 1615)
Examiner: G. Kishore)

Richard Zimmerman

DECLARATION OF ROBERT LAMB

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Robert G. Lamb, Ph.D., hereby declare and state as follows:

1. I am the inventor of the subject matter which is described and claimed in U.S. Patent Application Serial No. 09/670,346 (hereinafter "the '346 application"), filed on September 27, 2000. I am providing this declaration to provide information to the Patent and Trademark Office in support of a petition to revive the '346 application, which was abandoned without my intent.

2. In an agreement dated March 3, 2000, I licensed rights in the invention and in the '346 application to a subsidiary of Phlo Corporation. Pursuant to the license agreement, I retained the right to file, prosecute, and maintain the licensed patent applications and patents, but agreed to confer with the licensee on issues such as selection of legal counsel.

3. With my understanding and approval, Phlo Corporation (hereinafter, "Phlo") retained the law firm of Arent Fox Kintner Plotkin & Kahn (hereinafter "Arent Fox") to prosecute the '346 application on my behalf, and I granted a power of attorney to the attorneys and agents of Arent Fox to prosecute the '346 application. Pursuant to my arrangement with Phlo, the Arent Fox attorneys were instructed to communicate with both Anne Hovis (on behalf of Phlo) and me concerning Patent Office correspondence concerning the '346 application. (See Exhibit A, 2/16/01 letter, Arent Fox to Robert Lamb.)

4. I am aware that the Patent Office issued an Office action in the '346 application dated May 21, 2002. After the Office action was issued, I worked with Arent Fox and with representatives of Phlo in the preparation of an amendment to the '346 application (and supporting papers) that Arent Fox filed with the Patent and Trademark Office on October 25, 2002.

5. Pursuant to the arrangement described above in paragraph 3, I relied upon Anne Hovis and Arent Fox to keep me updated concerning the '346 application. Between October 25, 2002, and October 22, 2004, I did not receive any further updates from Arent Fox that there had been further developments from the Patent and Trademark Office in the '346 application that occurred after October 25, 2002. Specifically, I did not receive information from Arent Fox that the Patent Office had issued a Notice of Allowance or a Notice of Abandonment.

6. During the almost two year time period specified in the preceding paragraph, I contacted Anne Hovis on a number of occasions to determine the status of the patent application. (At least five times from 3/19/03 to 10/20/04.) Attached as Exhibit B are printed copies of electronic mail communications between Anne Hovis and me concerning the status of the application. These emails memorialize the fact that I periodically asked Anne Hovis about the status of the '346 application. In response to my inquiries, Anne Hovis told me that Phlo had received no further substantive Patent and Trademark Office communications after the amendment that we filed in October, 2002 and that Arent Fox had informed her that

there had been no such communications received by Arent Fox. (Some information that is not relevant to my status inquiry has been deleted from the printed emails.)

7. In June of 2003, I also telephoned and e-mailed Arent Fox attorney Richard Berman to inquire about the status of the '346 application, but I received no response.

8. On October 12, 2004, I granted Glenna Hendricks, a patent attorney with whom I had previously worked, a power to inspect and make copies of the '346 application file. Due to the long delay in communications since October 2002, I wanted Attorney Hendricks to determine the status of the '346 application.

9. On October 19, 2004, Atty. Hendricks informed me of, and I first became aware of, the following:

a) a Notice of Allowance had been issued by the Patent and Trademark Office ("PTO") showing a mailing date of January 3, 2003, to Arent Fox, the notice of allowance requiring an issue fee to be paid on or before April 3, 2003, in the amount of \$650;

b) a Notice of Abandonment had been issued by the PTO showing a mailing date of May 14, 2003 to Arent Fox.

10. The application was abandoned without my knowledge and without my intention to abandon it. I did not become aware of the abandoned state of the application until notified by Attorney Hendricks on October 19, 2004. Had I been made aware of the Notice of Allowance in a timely manner, I would have paid the issue fee to get the patent issued.

11. When I learned that the application became abandoned, I promptly communicated the status to Anne Hovis at Phlo.

12. Since the time I learned of the unintentional abandonment, I have made every effort to have this petition to revive filed as quickly as possible, which filing required the location and retention of mutually acceptable counsel to assist in the filing.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 11/22/04

Signature: Robert Lamb
Robert Lamb



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PTO/SB/81 (08-04)

Approved for use through 11/30/2005. OMB 0631-0035

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**POWER OF ATTORNEY
and
CORRESPONDENCE ADDRESS
INDICATION FORM**

Application Number	09/670,346
Filing Date	September 27, 2000
First Named Inventor	Robert Lamb
Title	VITAMIN E PHOSPHATE/PHOSPHATIDYLCHOLINE LIPOSOMES TO PROTECT FROM OR AMELIORATE CELL DAMAGE
Art Unit	1615
Examiner Name	G. Kishore
Attorney Docket No.	30899/40642

I hereby appoint:

Practitioners associated with the Customer Number: **04743**

OR

Practitioner(s) named below:

Name	Registration Number	Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

Please recognize or change the correspondence address for the above-identified application to:

The address associated with the above-mentioned Customer Number:

OR

The address associated with Customer Number:

OR

<input checked="" type="checkbox"/>	Firm or Individual Name	David A. Gass MARSHALL, GERSTEIN & BORUN LLP
-------------------------------------	-------------------------	---

Address	233 S. Wacker Drive, Suite 6300 Sears Tower
---------	--

City	Chicago	State	IL	Zip	60606-6357
------	---------	-------	----	-----	------------

Country	US	Telephone	(312) 474-6300	Fax	(312) 474-0448
---------	----	-----------	----------------	-----	----------------

I am the:

Applicant/Inventor.

Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

SIGNATURE of Applicant or Assignee of Record

Signature	Robert Lamb	Date	11/22/04
Name	Robert Lamb	Telephone	804-828-9688
Title and Company			

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

Total of **1** forms are submitted.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated:

Signature: **(David A. Gass)**